

COSMETOLOGISTS

Individuals providing beauty, barber, or women's hairstyling services are considered to be cosmetologists. Cosmetologists provide services in businesses which include, but are not limited to, the following types:

- Barber Colleges
- Barber Shops
- Beauty and Barber Shops combined
- Beauty Culture Schools
- Beauty Shops or Salons
- Cosmetology Schools
- Cosmetology Shops or Salons
- Facial Salons
- Hairdressers
- Hair Stylists, Men
- Hair Stylists, Women
- Manicure/Pedicure Shops
- Unisex Hairdressers

Types of employee services that are typical in the cosmetology industry are:

- Barbers
- Beauticians
- Clerical
- Cosmetologists
- Electrologists
- Facialists
- Hair Stylists
- Hairdressers
- Instructors
- Manicurists
- Masseurs
- Masseuses
- Receptionists

Who Is a Common Law Employee?

An employer-employee relationship exists when a person who hires an individual to perform services has the right to exercise control over the manner and means by which the individual performs his or her services. The right of control, whether or not exercised, is the most important factor in determining the relationship. The right to discharge a worker at will and without cause is strong evidence of the right of direction and control. Other factors to be taken into consideration are:

- 1) Whether or not the one performing the services is engaged in a separately established occupation or business.
- 2) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal without supervision.
- 3) The skill required in performing the services and accomplishing the desired result.
- 4) Whether the principal or the person providing the services supplies the instrumentalities, tools, and the place of work for the person doing the work.

- 5) The length of time for which the services are performed to determine whether the performance is an isolated event or continuous in nature.
- 6) The method of payment, whether by the time, a piece rate, or by the job.
- 7) Whether or not the work is part of the regular business of the principal, or whether the work is not within the regular business of the principal.
- 8) Whether or not the parties believe they are creating the relationship of employer and employee.
- 9) The extent of actual control exercised by the principal over the manner and means of performing the services.
- 10) Whether the principal is or is not engaged in a business enterprise or whether the services being performed are for the benefit or convenience of the principal as an individual.
- 11) Whether the worker can make business decisions which would enable him or her to earn a profit or incur a financial loss. Investment of the worker's time is not sufficient to show a risk of loss.

The right to control the means by which the work is accomplished is clearly the most significant test of the employment relationship and the other matters enumerated constitute merely secondary elements. In considering the factors, a determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relationship to the service being performed rather than a single controlling factor.

Who Is a Common Law Employee in the Cosmetology Industry?

The California Unemployment Insurance Appeals Board (CUIAB) has previously considered the status of cosmetologists. The CUIAB has generally held that cosmetologists were employees under conditions that include, but are not limited to, the following:

- The principal maintained a common appointment book and assigned customers to the cosmetologists. The principal set the cosmetologists' work schedule.

- The cosmetologists performed their services within the shop's fixed hours which were established by the principal.
- The principal provided the place of work, equipment, supplies, and held the business license. The principal advertised and provided business cards.
- The cosmetologists did not advertise and did not hold themselves out to the public as being an independently established business.
- The cosmetologists did not have clientele independent of the principal's customers.
- The principal set the prices, controlled the payments received from the customers, and paid the cosmetologists. The principal absorbed any loss when the customer did not pay or issued a nonnegotiable check.
- The cosmetologists provided only small hand tools such as scissors, combs, and brushes.
- The cosmetologists could not sublet or relinquish their chairs.
- The principal and the cosmetologists could terminate their relationship without legal obligation to each other.
- The cosmetologists performed their services on a continuous basis.
- The cosmetologists' services were in the direct furtherance and an integral part of the principal's business.

(Reference CUIAB Tax Decisions: T-97-71, T-96-27 & T-96-193, T-91-83, T-91-23, T-88-96, T-86-165 & -166, T-86-100, T-85-148, T-84-75, T-82-14, and T-79-119.)

The CUIAB has generally held that cosmetologists were independent contractors under conditions that include, but are not limited to, the following:

- The cosmetologists maintained a personal appointment book, scheduled their clients, and controlled their own schedules. The cosmetologists had keys to the premises and were free to work other hours.

- The cosmetologists maintained a current business license. The cosmetologists purchased their own business cards. The cosmetologists paid for their own products. The cosmetologists advertised their services in the phone book.
- The cosmetologists had their own separate clientele. The cosmetologists also provided the same services at locations other than the principal's business establishment.
- The cosmetologists had the right to refuse an appointment or refer an appointment to another cosmetologist.
- The cosmetologists set their own prices. The customers wrote their checks to the cosmetologists. The cosmetologists had the responsibility to collect on a bad check or bear the risk of loss.
- The principal's and the cosmetologists' relationship was that of a landlord/tenant. The cosmetologists were merely renting space from the principal.

(Reference CUIAB Tax Decisions: T-96-50, T-95-125, T-94-603, T-91-83, T-89-307 & -308, T-88-317, and T-88-215 & -216.)

The cosmetologist's possession of a state-issued cosmetologist license does not imply an independent contractor's status since all cosmetologists are required to possess one to practice that occupation.

Specific questions or assistance regarding the employment status of cosmetologists may be directed to the nearest Employment Tax Customer Service Office. Offices are listed in the State Government Section of the telephone book under Employment Development Department, Employment Tax Information or Payroll Tax Information and Assistance.

A formal ruling may also be requested by submitting a DE 1870, Determination of Employment Work Status, to:

Audit Section, MIC 94
P.O. Box 826880
Sacramento, CA 94280-0001

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.